

1955

August 5

SEP 22 1998

CONCORD, N.H.

Honorable Lane Dwinell
Governor of The State of New Hampshire
State House
Concord, New Hampshire

Dear Governor Dwinell:

You have requested my opinion whether the provisions of HB 136, s. 4, authorizing biannual sweepstakes within New Hampshire violate any provision of state or federal law. I respectfully reply that in my opinion the answer is in the negative.

The authority of the Racing Commission in connection with the conduct of two sweepstakes races a year within the enclosure of any race track licensed by it is very broad. For these purposes the Commission has been authorized to sell tickets "as it may determine necessary or advisable." This does not restrict the sale of tickets to the track enclosure. Furthermore, it does not require that the tickets be processed through the pari-mutuel machinery. Further, it is obvious that at some point there will have to be a drawing to determine the number of the winning ticket even though there may be a limitation that that ticket must first be group-wagered on a winning horse.

R.L., c. 447, s. 1, broadly prohibits lotteries in this state. Its language is such as to make it illegal for any person to ". . . make or put up a lottery or pretended lottery, or . . . dispose of any money or property, real or personal, by lottery, or in any such way that a hope or expectation of gain by luck or chance is made an inducement to pay for such property, or have any share or chance therein." Clearly, a ticket to a sweepstakes falls within this prohibition unless it can be found that the Legislature has excepted sweepstakes from these restrictions.

The sweepstakes amendment (HB 136, s. 5) has provided that Revised Laws, c. 171, s. 28 (the basic racing law of the

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state) shall be amended to include the sale of sweepstakes tickets, and that ss. 15, 16, 17 and 18 of Revised Laws, chapter 447, shall not apply to either pari-mutuel pools or to the sale of sweepstakes tickets. This does not except the provisions of the same chapter prohibiting lotteries, but it is noted that the sections of R.L., c. 447, excepted by HB 136, s. 5, are those applicable to questions of civil liability in respect to gambling transactions. The other provisions of the same chapter dealing with lotteries are essentially criminal in scope. By authorizing the conduct of a sweepstakes under HB 136, s. 4, the Legislature has in effect amended the criminal law of the state by implication to make legal in this limited field what was previously illegal as a lottery.

It is to be presumed that the General Court in enacting legislation does not intend to phrase a nullity. Therefore, by its amendment in s. 5 entitled, "Effect on Other Laws," it intended that sweepstakes should occupy the same exempt status as pari-mutuel pools. For this reason in construing legislative intent it is my opinion that the General Court intended to make lawful the sale of sweepstakes tickets in the same manner and to the same extent as the conduct of pari-mutuel pools.

In my opinion there is little doubt but that the provisions of HB 136, s. 4, would be interpreted to constitute a lottery within the meaning of federal law. The federal law on this subject is contained in Title 18, USCA, ss. 1031-1305. The federal law explicitly prohibits importing lottery tickets into this country or transporting them in interstate or foreign commerce. It further prohibits their deposit in the mail or the deposit in the mail of money or other evidences of indebtedness in payment therefor, or the publication of information concerning a lottery either in a newspaper, circular, or pamphlet in interstate or foreign commerce. The same is true of officials in the postal service or radio stations licensed by the Federal Communications Commission.

This authority is within the power of the federal government under the commerce clause of the federal constitution. However, so far as HB 136, s. 4, authorizes the conduct of a sweepstakes within the State of New Hampshire, it does not violate federal law. The possibility that the state agency charged with responsibility for the conduct of the sweepstakes might by regulation offend a section or sections of federal law is insufficient to warrant a finding that the authorizing legislation is illegal. The State Racing Commission is composed of responsible and trustworthy men who themselves act with the legal assistance of this office. It may fairly be assumed that their regulations in furtherance of the objects of HB 136, s. 4, will violate neither state nor federal law.

So far as I know, it is not within the

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Honorable Lane Dwinell

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power of the federal government to legislate on matters exclusively intrastate in nature. The sweepstakes authorized by the legislation in question can be so conducted under regulations which preserve the intrastate character of the operation.

WARREN WAT

BERNARD E. DUN

STANLEY DUN

J. H. DUN

J. H. ALEXANDER

J. H. DUN

LCW:D

For the foregoing reasons it is my opinion that HB 136, ss. 4 and 5, violate no provision of either state or federal law.

Respectfully,

Louis C. Wyman
Attorney General

COMMENT:

Please comment on change as
desired.

There are principles of law which mean
that the state is not to be bound by its
own laws. The state is not to be bound by its
own laws.

P=Private
A=Action
I=Info
F=File

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August 3, 1955

Louis C. Wyman, Attorney General

Special license plates

Frederick N. Clarke, Commissioner
Motor Vehicle Department
State House Annex

NEW HAMPSHIRE LAW LIBRARY

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CONCORD, N.H.

Dear Commissioner:

You have inquired whether you have authority to make an additional assessment should you provide a differently designed number plate under your authority as conferred by Revised Laws, chapter 119, section 1. I must answer in the negative.

Laws 1943, chapter 3, section 1, amending Revised Laws, chapter 116, section 7, explicitly provides:

"The commissioner shall furnish at his office, without charge, to every person whose motor vehicle is registered a number plate or plates of suitable design." [Emphasis supplied]

I have taken the liberty of preparing, at your request, a suggested additional amendment to House Bill No. 241, which in the opinion of this office would give you the authority to make such a charge. This suggested amendment, together with a number of copies thereof, is appended to this letter.

Cordially,

Louis C. Wyman
Attorney General

W/d
Encl.